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Taiwan's Application to the GATT: A New Urgency With the Conclusion of the Uruguay Round

SUSANNA CHAN*

I. INTRODUCTION

On January 1, 1990, the Republic of China (ROC or Taiwan) submitted its formal application to join the world's major international trade regulatory regime, the General Agreement on Tariffs and Trade (General Agreement or GATT).¹ The ROC formally applied to join the GATT as the autonomous customs territory of "Taiwan, the Pescadores, Kinmen, and Matsu."² The Taiwan government made concessions to the People's Republic of China (PRC or China) by applying as a customs territory and not as the "Republic of China."³

Taiwan's desire for membership is logical in light of its standing as the world's thirteenth largest trading nation, with holdings of more than \$80 billion, the largest in the world.⁴ However, Taiwan's bid to join the GATT poses numerous political and legal issues, particularly because most countries do not recognize Taiwan as a sovereign nation. Moreover, the recognized sovereign of China, the PRC government, strongly opposes Taiwan's application.⁵ China contends that Taiwan's bid must follow its own acceptance to the GATT.⁶

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1. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. 1103, 55 U.N.T.S. 187 [hereinafter General Agreement or GATT]. The Republic of China will be referred to as the ROC or Taiwan throughout this article.

2. *Taiwan Applies for GATT Membership, Files Formal Application in Geneva*, DAILY REP. FOR EXECUTIVES, Jan. 4, 1990, at A4.

3. The People's Republic of China will be referred to as the PRC or China throughout this article.

4. Harvey Feldman, *UN Unrelenting to Uninvited Taiwan*, WASH. TIMES, Dec. 5, 1993, at B4.

5. See *China Takes Early Action to Block Taiwan's GATT Membership Application*, 7 Int'l Trade Rep. (BNA) No. 4, at 131 (Jan. 24, 1990).

6. The assertions by the PRC that Taiwan must not be admitted and that Taiwan must be admitted following its own admission are contradictory in nature.

On December 15, 1993, the Uruguay Round of world trade talks under the framework of the GATT concluded. The Uruguay Round established agreements to reduce tariffs and thereby stimulate the future world economy. The new accord is estimated to increase worldwide gross domestic product by \$5.4 trillion in the next ten years.⁷

The Trade Negotiations Committee of the Uruguay Round adopted the text in the Final Act, which embodies the results of the talks. The adoption closes seven years of negotiations with more than 120 countries participating in the Round. On December 15, President Clinton informed both Houses of Congress of his intention to enter into the Uruguay Round trade agreements, stating that "with the conclusion of the [Uruguay] Round, we will have successfully achieved the objectives that Congress set for the United States in the negotiations."⁸

Taiwan also felt positive about the results of the Round and its future acceptance into the GATT by the end of 1994.⁹ Although the issues raised by Taiwan's application do not lend themselves to simple solutions, this article surveys the issues, particularly those pertaining to the Uruguay Round. Section II discusses China's historical relationship and role with the GATT. Section III addresses the legal issues raised by Taiwan's application to the GATT. Potential problems with Taiwan's accession are discussed in Section IV. Section V discusses the recent changes to the GATT from the conclusion of the Uruguay Round. The benefits that would accrue to Taiwan and other trading members of the GATT upon acceptance are discussed in Section VI. Section VII considers the urgency of admitting Taiwan to the GATT despite China's opposition.

II. HISTORICAL BACKGROUND

From 1946 to 1948, China participated in negotiations that established the International Trade Organization (ITO) and the GATT. In October 1947, China signed the Final Act of the General Agreement and became an original Contracting Party. However, the General Agreement was never

7. Y.C. Tsai, *Taiwan Stands to Gain US \$120 Billion in Foreign Trade in Next Decade*, Central News Agency, Dec. 17, 1993, available in LEXIS, World Library, CENEWS File.

8. Memorandum for the United States Trade Representative, 58 Fed. Reg. 67263, 67264 (1993).

9. See Tsai, *supra* note 7. Taiwan expects a 2% share of the increase in global trade from the Uruguay Round. This share could amount to \$120 billion. *Id.*

implemented.¹⁰ Rather, the Agreement was first brought into application through the Protocol of Provisional Application in 1947 (the 1947 Protocol).¹¹ All but one of the twenty-three signatories of the Final Act of October 30, 1947, signed the 1947 Protocol, the exception being Chile.¹² Chile later became a Contracting Party through accession by signing the Protocol for the Accession of Signatories of the Final Act on February 14, 1948.¹³ Thus, when China signed the 1947 Protocol on May 21, 1948, it became one of the twenty-three original Contracting Parties.¹⁴

When the GATT was first drafted, the Contracting Parties did not foresee that the GATT would form the basis of an organization; rather, it was to be a subsidiary agreement under the ITO Charter.¹⁵ At the Havana Conference in 1948, the Charter for the ITO was adopted.¹⁶ However, the U.S. Congress refused to approve the Charter, and thus, the proposed ITO was never established.¹⁷ Because the ITO Charter never came into existence, the GATT provisions entered into force through the 1947 Protocol. Hence, the GATT became the only international organization responsible for regulating international trade.¹⁸

On October 1, 1949, the Communists, led by Mao Tse-tung, overthrew the Nationalist government and replaced it with the PRC. The Nationalist government fled to Taiwan and the smaller nearby islands of Penghu, Kinmen, and Matsu. Once established, the Nationalist government was unable to fulfill its GATT obligations; it could not provide tariff concessions because most of the products were shipped from the mainland. Thus, on

10. Under article XXVI(6), the General Agreement enters into force after governments have accepted it. See GATT, *supra* note 1, art. XXVI(5)(a).

11. GATT, *supra* note 1, at 308, reprinted in 4 GATT: Basic Instruments and Selected Documents 3, 77-78 (1969) [hereinafter the 1947 Protocol]. See generally JOHN H. JACKSON, WORLD TRADE AND THE LAW OF GATT: A LEGAL ANALYSIS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 61-62 (1969).

12. The 1947 Protocol was to remain open for signature until June 30, 1948. JOHN H. JACKSON, WORLD TRADE AND THE LAW OF GATT, *supra* note 11, at 91.

13. *Id.* at 91.

14. The Nationalist government in Taiwan deposited its Instrument of Acceptance of the 1947 Protocol on April 21, 1948. GATT ANALYTICAL INDEX: NOTES ON THE DRAFTING, INTERPRETATION AND APPLICATION OF THE ARTICLES OF THE GENERAL AGREEMENT, at iv (5th ed. 1989).

15. Hungdah Chiu, *Taiwan's Membership in the General Agreement on Tariffs and Trade*, 10 CHINESE Y.B. INT'L L. AFF. 198 (1990-1991).

16. See U.N. Conf. on Trade and Employment, E/CONF. 2/78 (1948).

17. JOHN H. JACKSON & WILLIAM J. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 295 (2d ed. 1986).

18. Chiu, *supra* note 15, at 199.

March 7, 1950, Taiwan notified the Secretary General of the United Nations of its decision to withdraw from the General Agreement.¹⁹ Several Contracting Parties disputed the legitimacy of Taiwan's withdrawal, contending that the notification was made by a government without the legal power to act on behalf of China.²⁰

GATT Contracting Parties made no official decision on this issue. In 1965, Taiwan applied for observer status in the GATT, and the legitimacy of Taiwan's withdrawal was again questioned.²¹ GATT granted observer status to the ROC because it still held China's United Nations seat.²² The Chairman of the Contracting Parties stated that the admission of observers "did not prejudice the position of the Contracting Parties or of individual Contracting Parties towards recognition of the government in question."²³ The Nationalist government in Taiwan continued to hold rights as the recognized government of China until 1971.

A dramatic change occurred in November 1971 when the United Nations General Assembly passed Resolution No. 2758 (XXVI) on Restoration of the Lawful Right of the PRC in the United Nations at its twenty-seventh session.²⁴ With Resolution 2758 the U.N. decided to:

restore all its rights to the PRC and to recognize the representatives of its Government as the only legitimate representative of China in the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupied at the United Nations and in all the Organizations related to it.²⁵

Subsequently, the chairman of the Contracting Parties suggested that "the Republic of China should no longer have observer status" in the GATT in light of its policy to follow the decisions of the United Nations on political

19. *Communication from Secretary-General of United Nations Regarding China*, GATT Doc. CP/54 (Mar. 6, 1950).

20. *Schedule XX: United States Withdrawal of Concessions negotiated with China*, art. XXVII, GATT Doc. CP/115/Add 1 (July 26, 1951).

21. *Summary Record of Third Meeting*, GATT Doc. SR. 22/3 (Mar. 16, 1965) (held at the Palais de Nations, Geneva, 8 Mar. 1965).

22. *Id.*

23. *Id.*

24. *Resolution on Representation of China*, U.N. GAOR, 26th Sess., U.N. Doc. A/8429 (1971).

25. *Id.*; see also 1971 U.N.Y.B. 132 (concerning the Security Council's discussion of the PRC's representation in the GATT).

matters.²⁶ The Contracting Parties made a decision in accordance with the Chairman's suggestion.²⁷ The 1971 Resolution forms the basis for the current political status between Taiwan and the PRC.

The recognition of the PRC government as the legitimate government of China is in accordance with the norms of international law. Generally, recognition of a government as "proper" occurs when a government has effective control over most of the territory and the control is likely to continue.²⁸ In this case, the PRC government had controlled most of the territory of China after the departure of the Nationalist government in 1949.

The PRC did not communicate with the GATT for more than a decade following the 1971 UN Resolution. Then in 1982, the PRC requested permission to observe the GATT's thirty-eighth session. In 1984, the GATT granted the PRC observer status. On July 14, 1986, the PRC requested resumption of its status as a Contracting Party.²⁹ In March 1987, a GATT Working Party on China's status as a Contracting Party was established to "examine the foreign trade regime" of the PRC and to "develop a draft Protocol setting out the respective rights and obligations."³⁰ The Working Party made substantial progress until June 1989. This came to a halt after the unrest at Tiananmen Square and the subsequent PRC government's crackdown. The GATT Working Party suspended its meetings.³¹ On February 13, 1992, negotiations resumed for the first time in three years.³² Since resuming talks in 1992, progress on the PRC's application has been slow.³³

26. See *Summary Record of the First Meeting*, GATT Doc. SR. 27/2 (Nov. 19, 1971).

27. *Id.* at 3.

28. For general theory regarding requirements for recognition of governments in international law, see HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 87-136 (1947).

29. GATT Doc. L/6017 (July 14, 1986). Along with this request, China was allowed to participate in the Uruguay Round of trade talks. The Ministerial Declaration on the Uruguay Round states that the talks are open to "countries that have already informed the Contracting Parties . . . of their intention to negotiate the terms of their membership as a Contracting Party." *Id.*

30. GATT Doc. L/6191/Rev. 2 (Apr. 26, 1988).

31. Ya Qin, *China and GATT, Accession Instead of Resumption*, 27 J. WORLD TRADE 77 (Apr. 1993).

32. *Id.*

33. See *Latest GATT Talks on China's Readmission End With No Agreement*, 10 Int'l Trade Rep. (BNA) No. 22, at 911 (June 2, 1993). As of the time of this writing, major disputes remain between GATT members and China. China declared that it would not seek membership in the World Trade Organization at any cost and conceded that entry could be even further delayed. INVESTOR'S BUS. DAILY, July 29, 1994, at B1.

The ROC submitted its application for membership on January 1, 1990, while the PRC negotiated its membership in the GATT. It is noteworthy that the ROC applied in the name of the "Customs Territory of Taiwan, Penghu, Kinmen, and Matsu." The ROC applied as a customs territory in order to avoid a potential controversy, known as the "two Chinas" problem.

Furthermore, Taiwan's application expressed its willingness to join the GATT as a "developed" economy rather than as a "developing" economy. The GATT grants "developing" economies numerous exceptions from GATT obligations, such as more time to comply with tariff rates. By forgoing benefits accorded to "developing" economies, Taiwan displayed its goodwill and earnest desire to join the GATT.³⁴ Despite these concessions, the PRC government condemned the ROC's application as "utterly illegal."³⁵

III. LEGAL ISSUES RAISED BY TAIWAN'S APPLICATION

A central legal issue, aside from political considerations, is whether the ROC can join the GATT in its own right. The GATT does not require its members to be sovereign States. The term "Contracting Parties" is defined in article XXXII of the General Agreement as "governments which are applying the provisions of this Agreement under articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application."³⁶ Thus, a GATT Contracting Party is a "government" and does not have to be a government of a sovereign State.³⁷

34. Taiwan also displayed its goodwill when it established the International Economic Cooperation Development Fund in 1989. The Fund provides \$1.2 billion to assist developing countries. Chiu, *supra* note 15, at 200.

35. *China Takes Early Action to Block Taiwan's GATT Membership Application*, *supra* note 5, at 131.

36. GATT, *supra* note 1, art. XXXII.

37. One example of a member without sovereignty of its people is Hong Kong. Hong Kong has never been an independent state. It left Chinese dominion and went to the British in the 19th century and will be returned to China in 1997. *Accession of Hong Kong*, GATT Doc. L/5976 (Apr. 23, 1986).

A. Methods of Accession to the GATT

There are three methods by which a government can become a Contracting Party to the GATT.³⁸ The first method pertains solely to the original members that negotiated the General Agreement under the Protocol of Provisional Application. The original twenty-three nations became the "original" Contracting Parties.³⁹ The second path provided by the GATT is under article XXXIII; a government may accede "on terms to be agreed upon" between the acceding government and the Contracting Parties.⁴⁰ A favorable decision for acceptance requires a two-thirds majority of the Contracting Parties.⁴¹ The third method to become a Contracting Party is under article XXVI; a customs territory can join through sponsorship from a government that is already a Contracting Party.⁴² Because Taiwan has not applied as an original member of the GATT, only the procedures in articles XXXIII and XXVI are available to it.

The PRC government argues that Taiwan can apply only under article XXVI because there is no precedent for a non-State government joining the GATT under article XXXIII. Article XXVI allows membership by sponsorship from a Contracting Party that has international responsibility for the applicant. The reason the PRC urges accession only under article XXVI is that Taiwan would have to wait until the PRC's application is accepted; at this time the PRC would offer sponsorship to Taiwan. Article XXVI states that:

(a) Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary to the Contracting Parties at the time of its own acceptance.

(b) Any government, which has so notified the Executive Secretary under the exceptions in subparagraph (a) of this paragraph, may at any time give notice to the Executive Secretary

38. JACKSON, *supra* note 11, at 91.

39. GATT, *supra* note 1, at 194.

40. *Id.*, art. XXXIII.

41. *Id.*

42. *Id.*, art. XXVI. Hong Kong is a recent example of accession under article XXVI. Ya Qin, *GATT Membership for Taiwan: An Analysis in International Law*, 24 N.Y.U. J. INT'L L. & POL. 1059, 1088 (1992).

that its acceptance shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Executive Secretary.

(c) If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.⁴³

Paragraph (c) permits a Contracting Party to sponsor a customs territory that has *already accepted the rules of GATT*. Assuming that the PRC obtains membership first, it still could not use article XXVI to sponsor Taiwan because the provision concerns only a customs territory “in respect of which a Contracting Party has accepted this Agreement,” not a customs territory that has never applied GATT rules. Taiwan has not formally applied GATT rules. In addition, paragraph (a) states that the sponsoring government *has international responsibility* for the customs territory. However, the PRC could not accept the GATT on Taiwan’s behalf because it does not have international responsibility for Taiwan. Thus, Taiwan cannot accede under article XXVI.

Taiwan can become a member only under article XXXIII. It provides the routine procedure for accession by negotiating the terms between Contracting Parties and the government applying for membership. Article XXXIII states:

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the Contracting Parties. Decisions of the Contracting Parties under this paragraph shall be taken by a two-thirds majority.⁴⁴

43. GATT, *supra* note 1, art. XXXIII.

44. *Id.*

Under this article, two types of governments can accede to the GATT. The first is a government not a party to the Agreement acting on its own behalf; the second is a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations. Because Taiwan has applied as a separate customs territory, the latter condition applies in this case.

The PRC government contends that Taiwan cannot accede under article XXXIII because thus far only sovereign States have joined under the article.⁴⁵ However, there is no provision in the GATT that prevents a new precedent, such as admission of Taiwan as a customs territory, from being established. In addition, the accessions of both West Germany and South Korea counter the PRC's argument. While they were negotiating their memberships, questions arose regarding their possession of legal capacity to be admitted. However, their accession indicates that the GATT does not take a rigid attitude towards sovereignty under article XXXIII. Taiwan meets all of the basic eligibility requirements for membership under article XXXIII.

B. Taiwan's Status Under International Law

Taiwan's application to the GATT raises the issue of its legal capacity to enter into multilateral treaty relations. It is generally agreed that subjects of international law have treaty-making capacity. A subject of international law is "an entity capable of possessing international rights and duties and endowed with the capacity to take certain types of action on the international plane."⁴⁶ Such entities are referred to as entities with "international personality." Traditionally, only sovereign States possessed treaty-making capacity, but changes in international practice have expanded the concept.⁴⁷ In deciding whether a non-State entity has treaty-making capacity under international law, it appears that the only criterion is international practice itself.⁴⁸ As one legal theorist stated:

45. Qin, *supra* note 42, at 1093.

46. LOUIS HENKIN ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 168 (1980).

47. *Id.*

48. Qin, *supra* note 42, at 1079.

It may, indeed, be doubted that international law contains any objective criteria of international personality or treaty-making capacity. The very act or practice of entering into international agreements is sometimes the only test that can be applied to determine whether an entity has such personality or capacity, or, indeed, "statehood."⁴⁹

Taiwan can be viewed only as a non-State territorial entity because both Taiwan and China agree that Taiwan is a province of China.⁵⁰ Usually for a non-State territorial entity to enter into treaty relations, two conditions must be present: (i) the State that is responsible for the foreign relations of the non-State territorial entity must have given its consent, and (ii) other parties to the treaty must have accepted the participation of the non-State entity.⁵¹ To determine whether Taiwan has an international legal personality, its treaty-making capacity needs to be examined.

Taiwan's treaty-making capacity is not derived from consent by the PRC. Thus, the first condition for a non-State territorial entity to enter into treaty relations is not present. As for the second condition, Taiwan has previously entered into numerous agreements with foreign governments and is a party to a few multilateral treaties.⁵² For example, Taiwan remains a member of the Asian Development Bank (ADB) even after its name was changed from "Republic of China" to "Taipei China".⁵³ Other members of the ADB continued relations with Taiwan after the name change, thereby indicating their recognition of Taiwan's treaty-making capacity. In addition, Taiwan has been forming its own relations with other countries through bilateral trade agreements.⁵⁴

Accepting Taiwan as a member of the GATT would constitute recognition of Taiwan's treaty-making capacity only for GATT purposes.⁵⁵ It is important to note that membership in the GATT is no more significant

49. Oliver J. Lissitzyn, *Efforts to Codify or Restate the Law of Treaties*, 62 COLUM. L. REV. 1166, 1183 (1962).

50. Qin, *supra* note 42, at 1082.

51. *Id.* at 1080.

52. See Hungdah Chiu, *Legal Problems in Republic of China's Participation in Intergovernmental Organizations*, 4 ANN. REP. CHINESE INT'L L. INT'L AFF. 52 (1990).

53. ASIAN DEVELOPMENT BANK, ANNUAL REPORT 163 (1986).

54. For example, the Taiwan Relations Act of 1979 has allowed both Taiwan and the United States to benefit from continued trade after its loss of recognition as the sovereign government of China. 22 U.S.C. §§ 3301-3316 (1982).

55. Qin, *supra* note 42, at 1086.

legally than Taiwan's membership in the ADB. The ADB, like the GATT, is an intergovernmental economic organization in which Taiwan acts as a non-State territorial entity with treaty-making capacity.⁵⁶ Taiwan's application to the GATT is in accordance with the norms of international law for a non-State territorial entity.

IV. PROBLEMS WITH TAIWAN'S ACCESSION

A. *China Opposes Taiwan's Application*

One of the most obvious obstacles to Taiwan's admittance to the GATT is the PRC's staunch opposition. After Taiwan submitted its bid, the acting PRC Ambassador, Hou Zhitong, declared in a letter to GATT Director General, Arthur Dunkel, that the application was "utterly illegal" and did not merit discussion.⁵⁷ The PRC government's opposition reflects its belief that (1) there is only one China, (2) the PRC government is the official government of China, and (3) the ROC's application contravenes these beliefs. The PRC fears that acceptance of the ROC's application will promote international recognition of the ROC as the legitimate government of China. PRC leaders also fear that reunification between Taiwan and China would become even more remote if the GATT recognizes the strength of Taiwan's economy.

A problem with Taiwan's application is the concern that acceptance of its bid would constitute recognition of "two Chinas" or "one China, one Taiwan" in the international arena. The PRC strongly opposes Taiwan's bid despite her application as a "customs territory" to avoid this very issue.⁵⁸ After Taiwan submitted its application, the PRC stated that Taiwan would have the possibility of joining the GATT only after China's membership was "restored."⁵⁹ However, the PRC's opposition to Taiwan's accession before the PRC's own accession has no legal basis when one considers Hong

56. *Id.*

57. *China Takes Early Action to Block Taiwan's GATT Membership Application*, *supra* note 5, at 131.

58. *GATT Application Uses Customs Territory Name*, Foreign Broadcast Information Service, Daily Report, China, Jan. 5, 1990, at 53.

59. *Official of Economic and Trade Ministry Talks on the Question of Taiwan's Participation in the GATT*, OUTLOOK, Aug. 3, 1990, at 5.

Kong's accession to the GATT.⁶⁰ The PRC posed no objection when Hong Kong joined in 1986.⁶¹ Hong Kong acceded to the GATT under the sponsorship of the United Kingdom based on article XXVI.⁶²

The PRC would like to apply the same procedure to Taiwan and sponsor Taiwan's membership after the GATT accepts its own application. However, this logic is inherently flawed, as one scholar has explained:

Looking back on the history of the GATT in the past forty years, it can be seen that Article 26 of the General Agreement generally applies to succession by former colonies or dependent territories. That is, the colony or dependent territory of a state may, after gaining independence and possessing autonomy in the conduct of its foreign trade or the like, accede to the General Agreement upon a declaration by the suzerain (metropolitan) state of the colony or dependency establishing that fact. Thirty-eight members of the GATT have acquired membership through this procedure of succession. However, [as far as Taiwan is concerned] there is a problem of sequence for separate customs territories that acquired membership of the GATT through this procedure of succession; that is, the suzerain or responsible states acceded to the GATT on their behalves as customs territories before they possessed autonomy in their conduct of foreign trade and became separate customs territories. Taiwan will . . . have problems to accede to the GATT in accordance with this legal procedure: Unlike Hong Kong, Taiwan has never been in the GATT as a colony or dependent territory represented by its suzerain state; in view of the different economic and trade systems on the two sides [of the Taiwan Strait], it is inappropriate for the mainland to accede on Taiwan's behalf when its seat is restored in the GATT.⁶³

Therefore, it is inappropriate for Taiwan to join the GATT under article XXVI. Since Hong Kong's admission did not constitute the existence of "two Chinas," Taiwan's accession prior to the PRC's acceptance should not raise the problem of "two Chinas."⁶⁴

60. Chiu, *supra* note 15, at 202.

61. *Hong Kong Joins GATT, Separate Membership to Continue Even Under Chinese Sovereignty*, 3 Int'l Trade Rep. (BNA) No. 18, at 581 (Apr. 30, 1986).

62. *Id.*

63. YU-SHU FENG, AN INQUIRY TO THE POLITICAL, ECONOMIC AND LEGAL PROBLEMS ARISING FROM TAIWAN'S ACCESSION TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE 54 (1990).

64. Chiu, *supra* note 15, at 203. *But see* Yu-shu Feng, *One GATT, Two Systems*, FAR E. ECON.

B. Lack of Support from Other Members

Another problem facing Taiwan's application is the lack of support from other countries. Some of the European members of the GATT do not embrace the ROC's bid to gain membership.⁶⁵ Also, the United States initially reacted cautiously to Taiwan's application. Former U.S. Trade Representative, Carla Hills, said that the United States would respond "carefully" to Taiwan's request.⁶⁶ The United States took no action on the application for more than a year. However, in June 1991, the debate on the renewal of the PRC's most-favored-nation trade status in Congress helped to improve the outlook for Taiwan's accession into the GATT. Senator Max S. Baucus, Chairman of the Senate Subcommittee for International Trade, and fourteen other senators from both parties, asked then-President George Bush to end U.S. opposition to Taiwan's entry into the GATT as one concession in exchange for renewal of the PRC's most-favored-nation trade status.⁶⁷ The former President sent a letter to Senator Baucus on July 19, 1991, which stated his support for Taiwan's application:

I share your interest in Taiwan's accession to the GATT. As a major trading economy, Taiwan can make an important contribution to the global trade system through responsible GATT participation. The U.S. has a firm position of supporting the accession of Taiwan on terms acceptable to GATT contracting parties. The United States will begin to work actively with other contracting parties to resolve in a favorable manner the issue relating to Taiwan's GATT accession U.S. support for Taiwan's accession to the GATT as a customs territory should in no way be interpreted as a departure from the long-standing policy of five administrations which acknowledges the Chinese position that there is only one China, and that Taiwan is part of China.⁶⁸

REV., Mar. 8, 1990, at 48.

65. See *EEC Urged Not to Restrict Imports of ROC-Made Shoes*, Central News Agency, Sept. 26, 1989, available in LEXIS, World Library, CENEWS File. The Foreign Trade Association (FTA) in Brussels recently urged the EU not to set Community-level restrictions on imports of footwear from Taiwan and requested certain EU countries to abolish their restrictions on shoes imported from Third World countries. The EU did not want an influx of Taiwanese products in their domestic markets. *Id.*

66. *U.S. Pledges to Respond 'Carefully' to Taiwan's Application to Join GATT*, 7 Int'l Trade Rep. (BNA) No. 2, at 53 (Jan. 10, 1990).

67. Keith Bradsher, *U.S. Weighs Moves on Chinese Trade*, N.Y. TIMES, July 10, 1991, at A5.

68. Keith Bradsher, *U.S. Backs Taiwan on Trade Agency*, N.Y. TIMES, July 20, 1991, at A5.

Not only did the executive branch show enthusiasm, but the U.S. media also urged support of Taiwan's application because it would serve U.S. interests.⁶⁹

Thus, despite an initial lukewarm response from the United States, it appears that sentiment regarding Taiwan's application has grown more favorable. The Clinton administration presently holds the position that Taiwan should be granted membership once it has met GATT entry requirements.⁷⁰ In addition, many European nations have taken the lead from the United States by sending cabinet-level officials to Taiwan.⁷¹ Currently, the PRC is the only country actively opposing Taiwan's application for membership.

C. Invocation of GATT's Non-Application Clause

Unfortunately, Taiwan's admission to the GATT prior to that of the PRC might prove problematic. Taiwan's national policy prohibits direct trade with the PRC. Therefore, if Taiwan is admitted before the PRC, it may opt not to apply GATT relations to the PRC by invoking article XXXV.⁷² Article XXXV provides for non-application of the GATT between Contracting Parties in two cases: first, if the two Contracting Parties have not entered into tariff negotiations with each other, and second, if any of the Contracting Parties at the time of accession does not consent to such application. The provision can be invoked only when a new Contracting Party enters the GATT.⁷³ In addition, either the existing Contracting Parties or the new acceding member can invoke the provision.

Since the 1947 GATT Protocol was signed, Contracting Parties have used this non-application clause numerous times. It was used most often against Japan in 1955 when it acceded to the GATT. Due to fear of wage competition and other political reasons, fifteen Contracting Parties invoked

69. *Taiwan: Too Big to Ignore*, N.Y. TIMES, Nov. 10, 1990, at A22.

70. N.K. Han, *US Reiterates Support for Taiwan GATT Bid*, Central News Agency, March 25, 1994, available in LEXIS, World Library, CENEWS File.

71. 137 CONG. REC. S6124-6125 (daily ed. May 20, 1991) (proposals to revitalize U.S. policy in Asia).

72. Qin, *supra* note 42, at 1095.

73. In 1948, article XXXV was added because the voting requirement for accession was changed from unanimity to a two-thirds majority. This change meant that a Contracting Party could be forced to enter into relations with a country without its consent. See JACKSON, *supra* note 11, at 92.

article XXXV when Japan joined the GATT.⁷⁴ However, most of the Contracting Parties withdrew their use of article XXXV against Japan due to internal persuasion and collective pressure from other Contracting Parties.⁷⁵

Article XXXV can be invoked only when a government accedes under article XXXIII. Thus, the PRC is even more inclined to argue that Taiwan can accede only under article XXVI to avoid this potential non-application issue. However, Taiwan must accede under article XXXIII for the reasons discussed earlier.⁷⁶ Therefore, it seems likely that Taiwan will have the option of invoking article XXXV if Taiwan joins the GATT before the PRC so that Taiwan can enjoy the benefits of GATT membership without the need to extend GATT benefits to the PRC.

V. RECENT CHANGES TO THE GATT FROM THE URUGUAY ROUND

The Uruguay Round Agreements will magnify the benefits that will result from Taiwan's acceptance to the GATT. The Final Act of the Uruguay Round consists of the Agreement establishing the World Trade Organization (the WTO Agreement), the Understanding on Commitments in Financial Services, and Ministerial Decisions and Declarations.⁷⁷ The WTO Agreement establishes a new World Trade Organization as "the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement."⁷⁸ The purpose of the World Trade Organization (WTO) is to implement the WTO Agreement and the Multilateral Trade Agreements, provide the framework for implementing the Plurilateral Trade Agreements, supply the forum for negotiations among its members concerning their trade relations under the agreements in the annexes to this Agreement, and cooperate with the

74. See MARCO C.E.J. BRONCKERS, *PROTECTIONISM AND THE EUROPEAN COMMUNITIES* 60 (1987).

75. See JACKSON, *supra* note 11, at 101-02.

76. See *supra* notes 44-45 and accompanying text.

77. Office of the U.S. Trade Representative, *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* 1318, 1326 (1994) (version of Apr. 15, 1994) [hereinafter *Uruguay Round*].

78. *Id.* at 1328.

International Monetary Fund for greater coherence in global economic policymaking.⁷⁹

The WTO Agreement has four Annexes. Annex 1 includes Agreements on Trade in Goods, the new General Agreement on Trade in Services (GATS), and the new Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Annex 2 consists of the Understanding on Rules and Procedures Governing the Settlement of Disputes. Annex 3 provides for the Trade Policy Review Mechanism, a process of multilateral surveillance of national trade policies. The agreements in Annexes 1, 2, and 3 constitute integral parts of the WTO Agreement and are binding on all members of the WTO. Annex 4, however, holds agreements (Plurilateral Trade Agreements) binding only on those members that expressly accept them.⁸⁰

Article XIV of the WTO Agreement provides for original membership in the WTO to the original Contracting Parties to the GATT and the European Union.⁸¹ The Agreement also provides for future accession to the WTO Agreement and the Multilateral Trade Agreements on terms to be determined individually. It is important to note that the WTO Agreement is legally distinct from the GATT dated October 30, 1947.⁸² The Director General of the GATT, Peter Sutherland, has stated that the WTO "will not be a successor agreement to GATT, as defined in the Vienna Convention," insofar as governments accept the WTO Agreement and do not simultaneously withdraw their provisional application of the GATT under the 1947 Protocol.⁸³

The WTO is scheduled to become effective no later than July 1, 1995.⁸⁴ The Final Act states that participants who are not Contracting Parties to the GATT of 1947 must have concluded negotiations for their accession to the GATT 1994 as of the date of the WTO's entry into force.⁸⁵ Thus, if Taiwan's bid is not accepted before the WTO replaces the GATT in 1995, Taiwan will have to re-apply for membership. The vice chairman of the Taiwan Council for Economic Planning and Development, Hsueh Chi, believes that it would be difficult for Taiwan to join the WTO

79. *Id.* at 1328.

80. *Id.* at 1327-29.

81. *Id.* at 1335. The EU will become an original Member in its own right. *Id.* at 1334.

82. *Id.* at 1334.

83. *Id.* at 1334.

84. *Id.* at 1326.

85. *Id.* at 1326.

if it fails to gain GATT membership before the July 1, 1995 date.⁸⁶ Taiwan would be forced to comply with the more stringent rules of the WTO Agreement if it fails to gain GATT membership before the WTO replaces the GATT. It is therefore in Taiwan's best interests to enter the GATT before it is replaced by the WTO, as it will become a founding member of the WTO and stand to benefit from all the concessions negotiated in the Uruguay Round.

VI. EFFECTS OF TAIWAN'S ACCESSION TO THE GATT

A. *Benefits to Taiwan with Its Accession*

Obviously, Taiwan stands to gain significant economic benefits if it becomes a member of the GATT. It would benefit immediately by enjoying the lowest possible tariff rates under GATT's most-favored-nation principle.⁸⁷ The liberalization of tariffs will increase Taiwan's exports to other GATT member nations and thereby promote the domestic economy of Taiwan. It will also lower tariffs on imported goods in Taiwan. This is significant because it will ease internal pressure on the government to lower controls on imports.⁸⁸

In the agricultural sector, Taiwan should gain measurably from WTO membership. Despite strong domestic opposition by farmers regarding the opening of Taiwan's rice market,⁸⁹ government officials indicate that rice imports will be permitted.⁹⁰ The population will gain by the government's offer of assistance to rice farmers to switch to more profitable crops, thus using resources more efficiently.⁹¹ With the liberalization of global farm

86. Sofia Wu, *Taiwan Set to Join GATT Before End of 1994*, Central News Agency, Dec. 21, 1993, available in LEXIS, World Library, CENEWS File. Therefore, all government departments will work hand-in-hand to accelerate Taiwan's accession to the GATT before the end of 1994. *Id.*

87. See GATT, *supra* note 1, art. XXVIII.

88. James V. Feinerman, *Taiwan and the GATT*, 1992 COLUM. BUS. L. REV. 39, 48 (1992).

89. Nearly half of Taiwan's 824,000 farmers grow rice on 38% of Taiwan's available farmland. The rice crop in 1991, however, constituted just 26% of the total value of all farm produce. Lillian Lin, *Taiwan Considers Rice Problem*, Central News Agency, Jan. 1, 1994, available in LEXIS, World Library, CENEWS File.

90. *Taiwan Loosens Its Stance on Rice Imports*, Agence France Presse, Dec. 8, 1993, available in LEXIS, World Library, AFP File.

91. Lin, *supra* note 89.

trade in the Uruguay Round Agreement on Agriculture, Taiwanese citizens will enjoy lower prices on many foreign agricultural products.

Additionally, Taiwan will obtain access to GATT procedures for dispute resolution concerning unfair trade practices. This is particularly significant because Taiwan is denied access to traditional dispute resolution mechanisms such as those provided by the United Nations. With the provision of Understanding on Rules and Procedures Governing the Settlement of Disputes from the Uruguay Round, Taiwan will have access to the detailed rules and procedures set out by the Understanding if its bid is accepted. The Understanding will be administered by a Dispute Settlement Body that has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.⁹² With Taiwan's rapid economic growth anticipated to continue in the future, access to GATT dispute resolution mechanisms will take on greater importance.

Taiwan also stands to benefit in other ways with GATT accession. GATT membership for Taiwan will provide a non-political forum for Taiwan and the PRC to have communications with each other. A heightened level of contact with the PRC would not only further ease the PRC's transition to a market economy, but could also lead to talks of reunification, which the governments of both countries officially desire.

B. Benefits to GATT Members with Taiwan's Accession

All members of the GATT stand to gain economically if Taiwan accedes to the organization. GATT membership will further liberalize Taiwan's economy, which should draw increased foreign investment with its consumer-driven middle class population and massive Six Year National Development Plan to rebuild its infrastructure. In addition, as a member of the GATT, Taiwan would be required to submit detailed trade and economic information. Member nations would gain from greater transparency of Taiwan's trade practices.

With the conclusion of the Uruguay Round, Taiwan would be subject to its new standards in six key areas. Two of the six changes are

92. Uruguay Round, *supra* note 77, at 1654.

institutional in nature. The World Trade Organization, which will replace the GATT no later than July 1995,⁹³ will have a better system for settling disputes and tougher rules to counter the dumping of goods at below-market prices.⁹⁴ The remaining four areas deal with agriculture, textiles, services, and intellectual property rights, which are areas never before brought under a multilateral trade agreement.⁹⁵ Taiwan would be subject to all of the agreements in these areas with its accession.

GATT members also would benefit from increased protection of intellectual property rights. In response to pressure from developed countries, Taiwan enacted a copyright law in the late 1980s; however, its provisions still fall short of international standards. As a member of the GATT, Taiwan would be subject to the new detailed code of rules in the Agreement on Trade-Related Aspects of Intellectual Property Rights. It sets the standards for the availability, scope, and use of intellectual property rights on patents, copyrights, performers' rights, trademarks, industrial designs, microchip layout designs, and trade secrets.⁹⁶ The Agreement will protect patents for twenty years regardless of the place of invention. Copyrights will be protected for at least fifty years. The Agreement also gives trademarks stronger protection.⁹⁷ Finally, it requires that members of the WTO provide enforcement procedures under their national laws to permit effective action against any act of infringement of intellectual property rights covered by the Agreement.⁹⁸ The sooner Taiwan accedes to the GATT, the earlier GATT members will enjoy more protection of intellectual property and greater access to more effective remedies against any future infringement of intellectual property rights.

In the services area, although not encompassing as many areas as initially raised during the Round, the Agreement on Trade in Services begins extending rules to the fastest growing sector of world trade. There are special provisions for financial services, telecommunications, air transport, and labor movement.⁹⁹ In the textiles and clothing area, the Agreement on

93. *Id.* at 1326.

94. *Id.* at 1654-55.

95. *Id.* at 1328-29.

96. *Id.* at 1622.

97. Frances Williams, *Developing Nations Give Way on Patents*, FIN. TIMES, Dec. 16, 1993, at

4.

98. Uruguay Round, *supra* note 77, at 1623.

99. *Id.* at 1610-20.

Textiles and Clothing phases out the protectionist Multifibre Agreement and will allow greater international competition and force restructuring of outdated textile industries.¹⁰⁰ In the agricultural area, the Agreement on Agriculture cuts trade-distorting subsidies and import barriers over the next six years. Domestic farm supports are reduced by twenty percent. Japan's and South Korea's closed rice markets are scheduled to open gradually by agreeing to import some of their domestic rice needs.

VII. OTHER FINAL CONSIDERATIONS

The PRC contends that Taiwan's bid must follow its own acceptance.¹⁰¹ However, this argument has no supportable legal basis.¹⁰² Moreover, after accounting for various practical considerations, it is clear that Taiwan's application should not be placed on hold simply because the PRC contends that it should be stalled.

A. Difficulties in Resuming China's Membership

First, the PRC has encountered numerous problems and delays since it applied on July 10, 1986, to "resume" its GATT membership.¹⁰³ An initial problem with the PRC's application is its insistence on resumption of its original GATT status, instead of accession as a new member. Although it is now understood that resumption by China would serve as a legal formality only, significant legal problems remain regarding China's status with other GATT members.¹⁰⁴

The proposed resumption would cause further complications to the already complex legal structure of GATT, thanks to the significant development of GATT in the last four decades. During China's absence from GATT, the General Agreement has been amended numerous times and a new part (Part IV) regarding developing countries has been added to the Agreement. If China were to

100. *Greater Wealth of Nations*, FIN. TIMES, Dec. 16, 1993, at 19.

101. *Taiwan Province As a Part of China Has No Right to Join GATT By Itself*, PEOPLE'S DAILY, Oct. 20, 1989, at 1.

102. See *supra* notes 44-56 and accompanying text.

103. GATT Doc. No. L/6017 (July 10, 1986). See also *China Formally Says It Wants to Join GATT*, WASH. POST, July 10, 1986, at E3.

104. Qin, *supra* note 31, at 77-78.

resume its original membership, its legal status with respect to each of the subsequent amendments would require clarification. Moreover, during the years of China's absence, the number of GATT contracting parties has increased from the original twenty-two to over one hundred. Whereas China may seek resumption of its GATT application with other original contracting parties (and probably those which succeeded to GATT under the sponsorship of the original contracting parties), it cannot possibly "resume" GATT applications with those contracting parties which acceded to GATT during China's absence and have never before applied GATT with China. In order to establish GATT relations between China and these countries, separate agreements (from the agreement of "resumption") would have to be concluded between them. The crisscross GATT relations China may have with respect to different contracting parties and different GATT legal instruments could result in overwhelming legal and technical complications for the GATT system.¹⁰⁵

Thus, if China resumes membership, it would have to clarify its legal status with each amendment of GATT since 1947 and negotiate separate agreements with every member except the original twenty-two Contracting Parties. These difficult negotiations could delay China's acceptance even further.

B. China's Current Economic Status

The second problem with the PRC's application is that China is a non-market economy (NME)—an economy centrally planned and not organized on free market principles. With imports into NMEs, tariff concessions from a NME could be rendered meaningless by deliberate pricing decisions by State authorities.¹⁰⁶ With exports from NMEs, the lack of market pricing renders decisions concerning sales at less than fair value elusive and the concept of subsidies meaningless.¹⁰⁷ However, China recently instituted several key reforms in its bid for acceptance to the GATT. China unified its controversial dual-rate currency system in January 1994, thereby ending

105. *Id.* at 85.

106. Lori Fisler Damrosch, *GATT Membership in a Changing World Order: Taiwan, China, and the Former Soviet Republics*, 1992 COLUM. BUS. L. REV. 19, 28 (1992).

107. See Gary N. Horlick & Shannon S. Shuman, *Non-Market Economy Trade and U.S. Anti-dumping Countervailing Duty Law*, 18 INT'L LAW. 807 (1984).

four decades of rate-setting by central planners.¹⁰⁸ Controversy surrounded the dual system because it acted as a subsidy for State-owned companies; the government allowed them to buy hard currency at the lower official rate. The end of dual currency will facilitate the flow of imports and exports by permitting businesses to freely exchange yuan for foreign currency.

Other reforms to accelerate the transition to a market economy include reducing mandatory government pricing in retail sales, agricultural products, and production materials.¹⁰⁹ Despite these initial attempts at reform, Britain's top GATT negotiator, Christopher Roberts, commented that the State of "China's economy and its level of development will make it difficult for the country to comply with GATT requirements for membership."¹¹⁰ In light of these concerns, it is logical that GATT members proceed cautiously to obtain assurance that the PRC's method of international trade is in accordance with the letter and spirit of the GATT.

C. Positive Aspects of Taiwan's Application

Taiwan has a market-oriented economy despite the existence of a strong State sector and considerable State influence over private economic activity. Besides sharing the same goals of commitment to free trade and democracy with other GATT Contracting Parties, Taiwan has actively implemented policies to match current GATT standards. For example, Taiwan is willing to open its market to rice imports in accordance with the liberalization of agricultural trade from the Uruguay Round despite fierce domestic opposition.¹¹¹ In addition, Taiwan recently stated its intention to accelerate planned tariff cuts in its aim to join the GATT.¹¹²

In response to complaints of artificially low exchange rates, Taiwan endured a forty-five percent appreciation of the N.T. dollar from 1986 to 1988. Also, Taiwan announced that it will lift all restrictions on repatriation

108. *China Axes Dual-Rate Currency*, DAILY TELEGRAPH, Jan. 3, 1994, at 21.

109. *Specific Problems Facing China for GATT Re-Entry Are Outlined*, 10 Int'l Trade Rep. (BNA) No. 39, at 1690 (Oct. 6, 1993).

110. Amy Chew, *GATT Re-Entry Tough for China*, S. CHINA MORNING POST, Jan. 21, 1994, at 1.

111. *Taiwan Loosens Its Stance on Rice Imports*, *supra* note 90.

112. *Taiwan Aims for GATT Entry by End-1994*, Reuter Financial Wire, Dec. 21, 1993, available in LEXIS, News Library, REUFIN File.

of investment earnings by foreigners and raise the limits on foreign investment in the securities, banking, and insurance areas.¹¹³ Taiwan's deputy finance minister said the moves "would bring financial services rules closer to the spirit of the Uruguay Round."¹¹⁴ Taiwan's commitment to principles of the GATT is readily apparent and earnest.

The objections to Taiwan's application are politically based and have little to do with economic concerns. Taiwan's application for membership should not be stalled on the basis of the PRC government's fears that Taiwan's acceptance before the PRC's would imply legitimacy or recognition of Taiwan as the sovereign government of China. In fact, Taiwan is already a member of numerous international organizations without resulting in loss of recognition for the PRC or the existence of "two Chinas." Under various names, Taiwan belongs to the Pacific Economic Council, the Pacific Economic Cooperation Conference, and the Asian Development Bank (ADB).¹¹⁵ The ADB's purpose is to promote the economic and social progress of its developing member countries in the Asia-Pacific region. Taiwan, in the name of the Republic of China, was one of the founding members of the ADB. Taiwan was forced to change its name to "Taipei China" to retain its membership in the ADB when the PRC obtained its membership.¹¹⁶ The co-membership of Taiwan and the PRC created a precedent for the co-existence of two Chinese governments in an intergovernmental organization.¹¹⁷ The Asia-Pacific Economic Cooperation (APEC) is another intergovernmental organization in which both Taiwan and the PRC are equal members.¹¹⁸ It was established to promote greater cooperation among the Pacific Rim's fast-growing economies. APEC admitted the PRC, Taiwan, and Hong Kong simultaneously in November 1991.¹¹⁹ Taiwan has successfully joined these international organizations without resulting in a loss of recognition

113. Laura Tyson, *Taiwan Relaxes Bank Curbs*, FIN. TIMES, Aug. 10, 1994, at 3.

114. Dennis Engbarth, *Taiwan Eases Investment Curbs*, FIN. TIMES, Dec. 21, 1993, at 3.

115. Frances Williams & Jonathan Moore, *Taiwan's GATT Application Angers Peking, Who Goes First?*, FAR E. ECON. REV., Feb. 1, 1990, at 36.

116. Peter K.H. Yu, *On Taipei's Rejoining the Asian Development Bank Subsequent to Beijing's Entry: One Country, Two Seats?*, ASIAN AFF.: AM. REV., Spring 1990, at 10. This occurred in the midst of prolonged tension between the PRC and Taiwan.

117. Qin, *supra* note 42, at 1066. The International Criminal Police Organization (INTERPOL) is another intergovernmental organization in which Taiwan and the PRC both have a presence. *Id.*

118. Shim J. Hoon & Robert Delfs, *Block Politics*, FAR E. ECON. REV., Nov. 28, 1991, at 26.

119. *Id.*

of the legitimacy of the PRC government or the presence of "two Chinas." Likewise, China would not suffer politically if the GATT accepts Taiwan's application before the PRC's bid. Also, Taiwan should be accepted because, as British Ambassador to the GATT, Martin R. Morland, said, "Taiwan should be able to join the General Agreement on Tariffs and Trade because most of its trade measures now match the requirements set by the international trade regulatory organization."¹²⁰

If Taiwan's application were to be considered irrespective of China's opposition, Taiwan could serve as a model and influence China's transition to a market economy.¹²¹ Economic ties between Taiwan and China have become increasingly more intertwined. Two-way trade in 1992 was \$7.4 billion, and the figure for 1993 was expected to reach \$10 billion.¹²²

VIII. CONCLUSION

Some scholars believe that the PRC will withdraw its objections to Taiwan's bid after its own application is accepted. However, Taiwan should not be forced to wait for this possibility. Furthermore, it is an anomaly that Taiwan, which is an entity possessing "full autonomy with its external commercial relations," would be deprived of consideration due to the objections of a non-party to the GATT.¹²³ Moreover, China's application has encountered significant delays because of serious conflicts with China's economic system and record on human rights abuses.¹²⁴ These concerns have made GATT members justifiably more cautious and deliberate about the PRC's application. However, it is not rational to place Taiwan's application on hold until the PRC's bid is accepted in light of the significant changes that need to occur before China's bid is accepted.

120. Benjamin Yeh, *GATT Official Optimistic on Taiwan's Membership*, Central News Agency, Oct. 29, 1993, available in LEXIS, World Library, CENEWS File.

121. Damrosch, *supra* note 106, at 35-37. But see JOHN H. JACKSON, *RESTRUCTURING THE GATT SYSTEM* (1991). The leading U.S. scholar of the GATT stated that "it is not the purpose or role of the GATT to apply pressures on sovereign nations to accept market-oriented economic principles. The internal structure of a country's market should be left to that country's own judgment, as long as its practices do not harm other countries." *Id.* at 85. However, this is inapposite to U.S. policy that has continually encouraged China to privatize and liberalize its economy.

122. Richard J. Smith, *The Politics of Pragmatism: Taiwan and the United Nations*, HOUSTON CHRON., Sept. 19, 1993, at 4.

123. Damrosch, *supra* note 106, at 34.

124. See *supra* notes 106-110 and accompanying text.

Under GATT law, Taiwan meets the requirements of membership as a separate customs territory possessing full autonomy in the conduct of its external commercial relations. Under the Vienna Convention on the Law of Treaties, Taiwan's international practice of entering into agreements for various non-political purposes is evidence of Taiwan's treaty-making capacity, or international personality.

China's position that Taiwan's application should not be considered until its own bid is accepted rests on faulty legal assumptions. Taiwan cannot accede under article XXVI, and therefore does not need China as a sponsor. Taiwan can join only under article XXXIII, which permits a non-State territorial entity to join the GATT. The underlying objections by China are politically, not legally, based. Moreover, GATT membership for Taiwan will not constitute "two Chinas" or result in recognition of the legitimacy of Taiwan as the sovereign government of China.

Taiwan's application should be placed at the top of the GATT's agenda, particularly because the Uruguay Round of talks has ended and the WTO is set to replace the GATT in July 1995. Given the fact that Taiwan meets the eligibility requirements of the GATT and possesses considerable trading power, membership for Taiwan will benefit all of the world's major trading partners. These substantial economic benefits will be lost if Taiwan's application is further delayed and it is forced to re-apply to the WTO. The conclusion of the Uruguay Round provides new momentum for the future of the world economy. Taiwan and its citizens deserve the right to join the rest of the world in building a stronger economic future.

